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Serial No. 10/788,724

- 1 -

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: John FOX)	Confirmation No.: 6809
)	
Serial No.: 10/788,724)	Group Art Unit: 2883
)	
Filed: February 26, 2006)	Examiner: Peng, C.U.
)	

For: Controlled-intensity multiple-frequency multiple-axis
illumination of macroscopic specimens from a single light source
using special bifurcated cables

Atty's Docket No.: FOX 0002P

San Diego, California
December 20, 2006

PETITION TO ACT ON PETITION

Mail Stop Petition
Office of Petitions
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is not a Petition in the normal sense, but a Petition, or entreaty, that the Office of Petitions should now act in a comprehensible manner on a Petition already filed by Applicant.

Namely, Applicant did lodge the attached EXHIBIT A Petition, and accompanying response, under Certificate of Mailing on July 3, 2006. The Office of Petitions apparently received this Petition, as Applicant's EXHIBIT B check accompanying the Petition was cashed.

Now, instead of any normal response to his Petition, Applicant receives the attached EXHIBIT C NOTICE OF ABANDONMENT.

Receipt of this NOTICE is incomprehensible at this juncture.

Applicant's July Petition DID respond to the outstanding requirement of 21 September 2005, and made the required election.

Rectification is requested.

Due to the age of this case apparently not yet in substantive examination, the Office of Petitions is requested to call (or e-mail) Applicant's undersigned representative at 858 453 3574 AFTER 2:00 P.M. P.S.T. regarding any problems with acting favorably on Applicant's July Petition.

Thank you.

Sincerely yours,

William C. Fuess

William C. Fuess
Registration Number 30,054

William C. Fuess
FUESS & DAVIDENAS
Attorneys at Law
10951 Sorrento Valley Road
Suite II-G
San Diego, California 92121-1613
Telephone: (858) 453-3574 after 2:00 P.M. P.S.T.
Facsimile: (858) 453-3574 before 2:00 P.M. P.S.T.
E-mail: wfuess@gmail.com

[X] Attorney of Record
[] Filed Under 37 CFR §1.34(a)

CERTIFICATE OF MAILING

I hereby certify that this AMENDMENT and the documents referred to as attached therein are being deposited with the United States Postal Service as first class mail postage prepaid addressed to the: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date written below.

December 20, 2006
Date

William C. Fuess
Typed Name of Person
Mailing

Correspondence <http://www.megaupload.com/?d=DIHG7135> ce

William C. Fuess
Signature of Person
Mailing *Correspondence*

EXHIBIT A



PTO/SB/64 (10-05)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

LIG 0002P

First named inventor: Fox, John

Application No.: 10/788,724

Art Unit: 2883

Filed: February 26, 2004

Examiner: Peng, Charlie

Title: Controlled-intensity multiple-frequency multiple-axis illumination of macroscopic specimens from a single light source using special bifurcated cables

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ 750 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of reponse to requirement for restriction (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

William C. Fuess

Signature

July 2, 2006

Date

William C. Fuess

Typed or printed name

30,054

Registration Number, if applicable

10951 Sorrento Valley Road Suite 2G

Address

858 453 3574 after 2:00 P.M.

Telephone Number

San Diego, CA 92121

Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other: Request to re-check non-receipt of paper

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

July 2, 2006

Date

William C. Fuess

Signature

William C. Fuess

Typed or printed name of person signing certificate

William C. Fuess, Attorney at Law
10951 Sorrento Valley Road Suite 2G
San Diego, CA 92131-1613
PH: 858 433 3374

Ironstone Bank
8650 Genesee 228, San Diego, CA 92122

51531

PAY
TO THE
ORDER OF:

Commission of Account

July 3 2016
\$ 750.00

Seven hundred and fifty and no/100 Dollars

Memo:

10/758 724

Authorized Signature

William C. Fuess

51531

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: John S. FOX) Confirmation No.: 6809
Serial No.: 10/788,724) Group Art Unit: 2883
Filed: August 18, 2000) Examiner: Peng. C. U.
For: ILLUMINATING AND PANORAMICALLY VIEWING A
MACROSCOPICALLY-SIZED SPECIMEN ALONG A SINGLE VIEWING AXIS AT A
SINGLE TIME
Atty's Docket No.: FOX 0002P)

San Diego, California
November 22, 2005

RESPONSE TO REQUIREMENT FOR RESTRICTION

Box Amendment (No Fee)
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Timely in response to Office Action making a requirement for restriction under 35 U.S.C. section 121, Applicant makes the following election in the above-identified patent application:

The examiner has made requirement for restriction under 35 U.S.C. section 121 between five species, with no claim generic to all species but claims 1, 11, 18 and 21 generic to species A-D.

Applicant elects species A, claims 1,2,11,18,19 and 21, with traverse as regards species A, D and E, only.

In other words, should no generic claim be found allowable Applicant does not contest that his elected species A is patentably distinct from the species B and C. Namely, Applicant claims in species C a feedback sensor system (control circuits); and in species B a dichroic mirror. Each is a part of Applicant's invention not mandating the parts of species A, D,

and E

However, should no generic claim be found allowable Applicant respectfully traverses that his elected species A should be found patentably distinct from the species D and E.

These species - defined by physical parts - can only function as subsystem within the overall system of the invention, and are not patentably distinct therefrom. These species and subsystems -- required for operation of the invention -- are FUNCTIONALLY

Species A providing wavelength control, found by the Examiner to be expressed in Applicant's claimed bandpass filters.

Species D providing even illumination found by the Examiner to be expressed in Applicant's claimed fiber optics.

Species E providing light intensity control found by the Examiner to be expressed in Applicant's claimed natural density filters and aperture.

Applicants invention will not work correctly without wavelength control, even illumination, and light intensity control. Applicant finds that his elected species A, and also species D and E, should be examined together, as all three species A, D and E collectively define Applicant's invention, without each of which Applicant might have only a

- (1) a lighting system, or
- (2) a wavelength selection system, or
- (3) even a simple illumination system.

Instead, Applicant presents, and claims in the claims associated with all species A, D and E a unique system that combines all three functions described above to permit the system user to do research that they can not carry out with any other system.

Applicant petitions that claims 1,2,7,8,9,10,11,13,14,15,16,17,18,19,21,23 and 27 should be examined in common.

3. Summary

The present amendment and remarks has responded to the requirement for restriction (with traverse), and an election has been made.

In consideration of the election, the present application is deemed in condition for substantive examination. The timely action of the Examiner to that end is earnestly solicited.

Applicant's undersigned attorney is at the Examiner's disposal should the Examiner wish to discuss any matter which might expedite prosecution of this case.

Sincerely yours,

William C. Fuess

William C. Fuess
Registration Number 30,054

William C. Fuess
FUESS & DAVIDENAS
Attorneys at Law
10951 Sorrento Valley Road
Suite II-G
San Diego, California 92121-1613
Telephone: (858) 453-3574 after 2:00 P.M. P.S.T.
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E-mail: FandD@ricochet.com

[X] Attorney of Record
[] Filed Under 37 CFR §1.34(a)

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Box AMENDMENT No Fee, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date written below.

November 22, 2005

William C. Fuess

William C. Fuess



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: John S. FOX) Confirmation No.: 6809
Serial No.: 10/788,724) Group Art Unit: 2883
Filed: February 26, 2006) Examiner: Peng. C. U.
For: Controlled-intensity multiple-frequency multiple-axis
illumination of macroscopic specimens from a single light source
using special bifurcated cables)
Atty's Docket No.: FOX 0002P)

San Diego, California
July 3, 2006

REQUEST TO RE-CHECK NON-RECEIPT OF PAPER

Mail Stop Petition
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The present unintentionally abandoned application is timely petitioned to be revived by the attached form PTO/SB/64.

Before reviving the application, and collecting the fee, the Petitions Examiner is, however, requested to make, by calling such group in the PTO as may prove pertinent if necessary, one further inquiry as to whether the paper not received - a response to a requirement for restriction - was in actual fact timely received in the PTO.

Applicants' undersigned representative believes that the paper attached hereto as EXHIBIT A was timely sent to the PTO on the indicated date of November 22, 2005. However, Applicant cannot now prove this to the standards of the PTO, which evidently require a certificate of express mailing in support of any Petition that the document WAS timely mailed. Applicant's response of 22 November 2006 was not so express mailed, but was mailed only by normal post.

Serial No.: 10/778,724
Page 3

Applicant's undersigned attorney is at the Petition Examiner's disposal should the Petitions Examiner wish to discuss any matter which might facilitate determination on this request.

Sincerely yours,

William C. Fuess

William C. Fuess
Registration Number 30,054

William C. Fuess
FUESS & DAVIDENAS
Attorneys at Law
10951 Sorrento Valley Road
Suite II-G

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E-mail: wfuess@gmail.com

☒ Attorney of Record
☐ Filed Under 37 CFR \$1.34(a)

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date written below.

July 3, 2006
Date

William C. Fuess
Typed Name of Person
Mailing Correspondence

William C. Fuess
Signature of Person Mailing
Correspondence

EXHIBIT B

IronStone Bank

[Close Window](#)

Date	Description	Check Amount
07/17/2006	Check / 000000 / Print / Display Back	\$750.00

William C. Fuess, Attorney at Law
10931 Sorrento Valley Road Suite 10
San Diego, CA 92121-1613
PH: 858 453 3374

Ironstone Bank
8650 Genesee 228, San Diego, CA 92122

51531

PAY
TO THE
ORDER OF:

Commissioner of Patents

July 3, 2006

\$ 750⁰⁰/₁₀₀

seven hundred and fifty and 00/100 Dollars

Memo:

10/788 724

William C. Fuess

Authorized Signature

51531

⑈0000075000⑈



UNITED STATES PATENT AND TRADEMARK OFFICE

EXHIBIT C

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,724	02/26/2004	John S. Fox	LIG 0002P	6809

7590 05/01/2006

William C. Fuess
FUESS & DAVIDENAS
Suite II-G
10951 Sorrento Valley Road
San Diego, CA 92121

EXAMINER

PENG, CHARLIE YU

ART UNIT	PAPER NUMBER
----------	--------------

2883

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

10/788,724

Examiner

Charlie Peng

Applicant(s)

FOX, JOHN S.

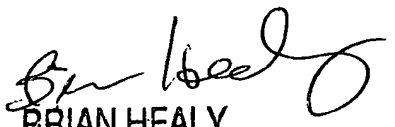
Art Unit

2883

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 21 September 2005.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:


BRIAN HEALY
PRIMARY EXAMINER
ART UNIT 2883

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.